

SBA

SOP 37 11 5

Labor Relations Program

Office of Human Resources

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

National

SUBJECT:	S.O.P.		F
	SECTION	NO.	
Labor Relations Program	37	11	

INTRODUCTION

1. Purpose. To establish guidelines and procedures for the management and implementation of SBA's Lab Relations Program.
2. Personnel Concerned. All SBA Employees.
3. Directives Canceled. SOP 37 11 4.
4. Originator. Guidance, Innovation, and Review Division
Office of Human Resources.

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SBA LABOR RELATIONS PROGRAM

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Chapter 1

General Information

1. What Is the Purpose of this Standard Operating Procedure (SOP)?

This SOP provides guidance to supervisors and managers in effecting their labor-management relations responsibilities. It also advises employees of their rights guaranteed by statute and how SBA's Labor Relations Program is administered.

2. What Is the Source of Authority for SBA's Labor Relations Program?

The Federal Service Labor-Management Relations Statute and Executive order place certain responsibilities, restrictions, and rights on SBA management, employees, and labor organizations.

- a. Title 5 of the United States Code, Chapter 71, Labor-Management Relations, 5 U.S.C. 7101 et sec. (Act) governs all dealings with Federal employees and labor organizations representing Federal employees.
- b. Executive Order 12871, Labor Management Partnerships (E.O. 12871, see appendix 4) directs the Administrator to form partnership councils or committees (see appendix 5) that are not adversarial in nature. It also expands the scope of bargaining by directing management to negotiate in areas that were formerly permissive subjects of bargaining [5 U.S.C. Section 7106 (b)(2)].

3. What Are the Basic Elements of SBA's Labor Relations Program?

SBA's basic labor relations program consists of:

- a. Exercising management's statutory rights to the extent necessary for providing quality service to the small business community;
- b. Negotiating in good faith with representatives of exclusive bargaining units, using interest-based bargaining to reach agreements at the appropriate level of exclusive recognition;
- c. Ensuring employees and recognized unions full exercise of their rights under law, Executive order, and, where applicable, negotiated agreement;

- d. Remaining sensitive to employee needs and concerns, and taking appropriate action to correct or improve situations that are within the discretion of management authority;
- e. Using the negotiated grievance procedure and grievance mediation to resolve disputes at the level of authority nearest the origin of the dispute; and
- f. Emphasizing and giving full force and effect to the requirements of efficient operation and high levels of productivity as elements of joint concern to employees, unions, and management.

4. Does SBA's Labor Relations Program Cover All Employees?

Yes. Your specific duties and responsibilities may limit your rights under this program or place specific labor relations responsibilities upon you. Look at your position description cover sheet to determine the bargaining unit status (BUS) code for your position. As an SBA employee you are either:

- a. Excluded from belonging to a bargaining unit based on statutory exclusion or case law decision (BUS Code 8888);
- b. Included in an exclusively recognized bargaining unit based on a unit determination by the Federal Labor Relations Authority (FLRA) or its predecessor (BUS Codes of 0033, 0045, 0054, 0150, 0160 or 0170); or
- c. Eligible to belong to a bargaining unit should a labor organization petition to represent your office or organizational unit (BUS Code 7777).

5. What Rights Do Employees Have Under This Program?

Under 5 U.S.C. Section 7102, each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such rights, except as otherwise provided by the Act. This includes the right to:

- a. Act for a labor organization as a representative and, as such, the right to present the views of the labor organization to SBA officials and other officials of the executive branch of the Government, the Congress, or other appropriate authorities;
- b. Engage in collective bargaining about conditions of employment through

representatives chosen by employees; and

- c. Have representation, upon request, by a representative of the employee's bargaining unit at any examination by SBA management, if the employee reasonably believes that the examination may result in disciplinary action against the employee. See 5 U.S.C. Section 7114 (a)(2)(B)(i) and (ii). This right is commonly referred to as your "*Weingarten Rights*," N.L.R.B. v. J. Weingarten, Inc., 95 S. Ct. 959 (1975) 88 LRRM 2689.

6. What Rights Do Labor Organizations Have?

Under 5 U.S.C. Section 7111, SBA must grant exclusive recognition to a labor organization when a majority of voting employees in an appropriate unit select that labor organization in a secret ballot election. A labor organization accorded exclusive recognition will be:

- a. The exclusive representative of all employees in the unit without discrimination and without regard to labor organization membership;
- b. Entitled to negotiate binding agreements covering all employees in the unit; and
- c. Given the opportunity to represent employees at any formal discussion between one or more representatives of SBA and one or more employees in the unit or their representatives concerning any grievance, any personnel policy or practice, or other general condition of employment.

7. What Makes a Meeting "Formal?"

A "formal" meeting or discussion occurs as follows.

- a. A supervisor schedules a meeting and requires the attendance of one or more bargaining unit employees to discuss:
 - (1) A grievance;
 - (2) Changes in any personnel policy or practice; or
 - (3) General conditions of employment. (Examples of general conditions of employment are: hours of work, leave, overtime, and such work environment matters such as parking, access to food, heat, air conditioning, and safety.)

- b. Generally, routine discussions between a supervisor and a bargaining unit employee over such work-related matters as assignment of work, performance feedback, and work techniques do not meet the requirement of a formal discussion. However, a staff meeting may accidentally turn into a "*formal discussion*" when managers respond to a question (unrelated to the discussion) that addresses a condition of employment, personal complaint, or grievance. When this happens, the manager should acknowledge the employee's concern and close the discussion of the issue because such matters require formal notice to the Union.

8. What Rights Does Management Have?

Under 5 U.S.C. Section 7106(a), management retains the right to:

- a. Determine SBA's mission, budget, organization, number of employees, and internal security practices;
- b. Hire, assign, direct, layoff, and retain SBA employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
- c. Assign work, make determinations with respect to contracting out, and determine the personnel by which SBA operates;
- d. Make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate recruitment source; and
- e. Take whatever actions may be necessary to carry out the SBA's mission during emergencies.

9. What Is a Bargaining Unit?

A bargaining unit is a group of employees certified by the Federal Labor Relations Authority (FLRA) to deal with SBA management over matters of employment. An appropriate bargaining unit occurs when the FLRA determines that a clear and identifiable community of interest among the employees covered by a petition, and where dealing with them collectively would promote efficient SBA operations.

10. Will the Union Represent Me?

All members of the group certified by the FLRA are bargaining unit members, even if they don't belong to the union or pay dues. A unit certified by the FLRA must represent all members of the bargaining unit regardless of their union affiliation.

11. Do I Have a Choice of Belonging to a Previously Certified Bargaining Unit?

No, you do not. All members of the group found to be appropriate and certified by the FLRA as bargaining unit members are members of the bargaining unit even if they do not belong to the union and pay dues.

12. What Bargaining Units Does SBA Currently Recognize?

SBA recognizes the following exclusive bargaining units: AFGE Council 228, National Consolidated Bargaining Unit (see appendix 3, AFGE Council 228 Unit Description); NFFE Local 1851, Denver Office of Financial Operations and Denver District Office; NFFE Local 2170, Casper District Office; and NFFE Local 1454, Houston District Office.

13. What Is an Interagency Local?

An interagency local is a local union that represents more than one agency. These local unions negotiate and administer the collective bargaining agreements for several agencies. Pittsburgh, PA; Casper, WY; Corpus Christi, TX; and Madison and Milwaukee, WI are SBA district offices where an interagency local represents and administers one or more agency labor agreements.

14. Are Any SBA Offices Not in a Recognized Bargaining Unit?

Yes.

- a. The Office of the Inspector General is a functionally distinct group of employees who share a community of interest separate and distinct from the employees in SBA's existing bargaining units.
- b. The Office of Disaster Assistance and the four Disaster Area Offices are functionally distinct groups of employees who share a community of interest separate and different from the employees in SBA's existing bargaining units.

- c. The following regional, district, and branch offices and service centers are not in a bargaining unit: Agana, Guam; Honolulu, Hawaii; Anchorage and Fairbanks, Alaska; Spokane, Washington; Portland, Oregon; Boise, Idaho; Sacramento, California; Sioux Falls, South Dakota; Kansas City and St. Louis, Missouri; Des Moines, Iowa; Omaha, Nebraska; San Antonio and El Paso, Texas; Detroit, Michigan; Cincinnati, Ohio; Nashville, Tennessee; Birmingham, Alabama; Jacksonville, Florida; Columbia, South Carolina; Baltimore, Maryland; Wilmington, Delaware; and Harrisburg and Wilkes-Barre, Pennsylvania; Denver Personnel Servicing Center; Denver Litigation Center; Litigation Center - (EAST) Philadelphia, Pennsylvania; Hazard, Kentucky LowDoc Center; Sacramento LowDoc Center; Birmingham, Alabama Disaster Home Loan Service Center; El Paso, Texas Disaster Home Loan Service Center.

15. What SBA Offices Are Certified for Dues Allotment?

On May 23, 1995, the FLRA certified SOLIDARITY, U.S.A., an independent union, for voluntary allotment of dues from:

All professional and nonprofessional employees employed by the Small Business Administration at its: Baltimore, Maryland District Office; Kansas City, Missouri Regional Office; Kansas City, Missouri District Office; Springfield, Missouri Branch Office; St Louis, Missouri District Office; Wichita, Kansas District Office; but excluding all management officials, supervisors, and employees described in 5 U.S.C. Section 7112(b)(1), (2), (3), (6) and (7).

16. What Is a Dues Allotment?

A dues allotment is a voluntary automatic deduction from your salary check to cover your union dues.

17. What Conditions Must a Labor Organization Meet to Collect Dues Through Payroll Allotments?

To be eligible to receive employee-authorized dues withholdings, a labor organization must have either FLRA:

- a. Certification as representing at least 10 percent of the employees in an appropriate unit where no other labor organization has status as the exclusive representative; or
- b. Certification as the exclusive representative.

18. What Is the Difference Between Exclusive Recognition and Certification for Dues Allotment?

The FLRA certifies both, but not for the same unit. FLRA certification provides for:

EXCLUSIVE RECOGNITION	DUES ALLOTMENT
Collection of Dues	Collection of Dues
Negotiation of Agreements	
Representation at: Grievance Meetings and All Employee Meetings	

19. May I Have Union Dues Withheld from My Pay and How Do I Qualify?

Yes. To be eligible to have dues withheld from your pay, you must:

- a. Be in an appropriate unit of exclusive recognition or in an appropriate unit for the purpose of dues allotment as determined by the FLRA;
- b. Be a member in good standing of the recognized labor organization; and
- c. Voluntarily request in writing that dues be withheld from your earnings by executing Standard Form 1187, "Request for Payroll Deductions for Labor Organization Dues."

20. What Is the Procedure for Dues Withholding?

- a. Labor organizations desiring to arrange for dues withholding or change the amount of dues withheld, must do all of the following:
 - (1) Meet the conditions in paragraph 1-15;
 - (2) Provide the name of the labor organization official authorized to receive the remittances, along with the address to which all remittances are to be mailed;
 - (3) Submit requests for a "Dues Allotment Agreement" or an "Increase in Dues" in writing to SBA's Labor Relations Officer (LRO) in the Guidance, Innovation, and Review Division of the Office of Human Resources; and
 - (4) Submit the completed SF 1187 after the authorized labor organization official certifies the amount of the dues to the appropriate servicing personnel office for processing.
- b. An employee who wishes to make an allotment must obtain an SF 1187 from the labor organization, complete the form in its entirety, and return it to the labor organization.
- c. The SBA cannot process an SF 1187 from an employee who is:
 - (1) Ineligible for membership in a bargaining unit, i.e., supervisor, management official, personnelist, etc. (employees whose BUS codes are 8888 may not make an allotment for payroll deductions for labor organization dues); or
 - (2) Not a member of a bargaining unit or an office certified for dues withholding (see paragraph 1-3) or an office certified for voluntary dues allotments (see paragraph 1-15).
- d. The SBA will normally begin deductions for a dues allotment at the beginning of the first complete pay period after the servicing personnel office receives a properly signed and certified SF-1187 if it is received at least 5 days before the beginning of the pay period.
- e. The SBA will withhold dues from each biweekly salary, unless the employee's net salary after other legal and required deductions is not sufficient to cover the amount of dues allotment.

21. How Often and When Can A Union Change Its Dues Structure?

- a. A union can change its dues structure once every 12 months, unless otherwise provided for in an appropriate collective bargaining agreement.
- b. The amount of the dues shall remain unchanged until the appropriate official of the labor organization provides written certification to SBA's Labor Relations Officer, Office of Human Resources, of the new amount of the biweekly dues deduction.

22. When and How Can I Cancel My Dues Allotment?

Your allotment must remain in effect for at least 1 year. If you wish to cancel your allotment, you can do so within 15 days after the 1 year anniversary. You may submit an SF 1188, "Cancellation of Payroll Deductions for Labor Organization Dues," or any other written, signed, and dated cancellation to your servicing personnel office. You also must send a copy of the revocation to your labor organization.

23. Can My Dues Allotment Automatically Terminate?

Yes, your dues will automatically terminate when:

- a. Your labor organization loses its exclusive recognition or authorization for a dues withholding agreement; or
- b. You are no longer in the bargaining unit.

Chapter 2

Day-to-Day Labor Relations

1. Who Is Responsible for Administering a Labor Agreement?

On a day-to-day basis you are, if you are either a Union officer, steward, or a member of the management team (supervisor, office director, manager, or Management Board member). The parties to the collective bargaining agreement must ensure that the agreement's application is fair and consistent.

2. What Should I Do When a Labor Organization Initiates an Organizing Drive?

a. Managers and Supervisors of Non-represented Offices.

Managers and supervisors in non-represented offices must be familiar with paragraph 1-4 and 1-5 of this SOP, which describe the statutory rights of employees and labor organizations. When faced with an initial organizing campaign, you should do the following.

- (1) Contact your servicing personnel office for advice.
- (2) Remain completely neutral.
- (3) Prepare a general memo to your management team advising them that a Union has a right to organize employees and that employees have the right to assist, form, or join a Union or to refrain from engaging in those activities. You should also make clear that you will not tolerate discrimination or reprisal against an employee who engages in such activities to form or join a Union. You may advise your supervisors that they have a right to join a Union, however, their participation in activities on behalf of the labor organization is limited. As a non-bargaining unit member, supervisors cannot be represented by an SBA employee representative of a labor organization and cannot have dues automatically withheld from his or her salary.
- (4) Respond to a Union representative's request to meet with employees. You may negotiate use of facilities, space, and time for such a meeting. Contact your servicing personnel office for advice before responding to the union's request.

- (5) Insist that any Union informational meetings be held outside of the work area, before or after work, or during lunch break.
- (6) Request to be present at the general information meeting. You should attend the meeting, and be seen but not heard.
- (7) Advise employees that they may not distribute Union literature, or organize during work hours or at employee work areas. Such activities are permitted only during lunch breaks or before or after duty hours outside of the work area. The one exception is if employees eat lunch at their desks and no one else is around who is working. In such cases, the employee organizer may approach co-workers at their desks.

b. Managers and Supervisors of Represented Offices.

Do not approve requests for SBA facilities and services from a labor organization challenging an incumbent union unless the challenger has "equivalent status" granted by the FLRA. To do so would make you vulnerable to an unfair labor practice (ULP) charge filed by the incumbent union under 5 U.S.C. Section 7116(a)(3). SBA's labor relations officer (LRO) can advise you whether or not a challenger has equivalent status.

- (1) A labor organization obtains "equivalent status" by filing a representation petition and a showing of interest of 30 percent of the employees in the unit (membership applications and/or signed authorization cards) with the FLRA. If the FLRA finds sufficient evidence establishing the required showing of interest the appropriate FLRA regional director will notify SBA's labor relations officer. See 5 C.F.R. Section 2422.10(e).
- (2) When the union that represents the employees in your office announces a membership drive to canvas employees, circulate petitions, post and distribute literature, use meeting space, and other aspects associated with these activities, you should refer to the appropriate provisions of the controlling agreement before taking any action. If the collective bargaining agreement is silent, you may (seek advice from your servicing personnel office for advice before responding to the union):
 - (a) Negotiate use of facilities, space, and time for a meeting;
 - (b) Insist that any Union informational meetings must be before or after work or during lunch break, and outside of the work area;
 - (c) Request to be present at the general information meeting;

- (d) Advise employees that they may not distribute Union literature or organize during work hours or at employee work area. Such activities are permitted only during lunch breaks or before or after duty hours outside of the work area. The one exception is if employees eat lunch at their desks and no one else is around who is working. In such cases, the employee organizer may approach co-workers at their desks.

3. What SBA Services and Facilities May a Labor Organization Use?

Union officials may negotiate for the use of SBA personal computers, facsimile machines, telephones, and photocopiers for representational purposes. There are occasions when a local union officer or steward has a reasonable need for privacy, such as a discussion with an employee concerning a grievance. Supervisors should consult with their servicing personnel office before granting requests for the use of such facilities. Generally, supervisors may grant reasonable or routine requests as long as it does not interfere with the carrying out of SBA's mission.

4. What Is Negotiable?

On a day-to-day basis:

- a. Issues where the Master Agreement and/or local agreements are silent are negotiable to the level of your delegated authority;
- b. Any changes in past practices (unwritten work rules) are negotiable, including changes in hours of duty, rearranging office space, etc; and
- c. Grievance settlements are negotiable to your level of authority upon advice and concurrence of your servicing personnel specialist and the Office of the General Counsel.

5. What is the Purpose of the Negotiated Grievance Procedure (NGP)?

The NGP provides a forum to resolve employee, union, and management complaints arising out of the collective bargaining agreement at the lowest level of the authority. The procedure recognizes that the lowest level of authority may have the authority to resolve the complaint and the NGP provides for three progressive steps for the purpose of narrowing each party's contentions prior to a final decision.

6. What Is Grievable Under an NGP?

All SBA collective bargaining agreements cover virtually any complaint or dissatisfaction an employee may have concerning her/his job with the following statutory exclusions, see 5 U.S.C. Section 7121(c):

- a. Violations of subchapter III of Chapter 73 of Title 5, United States Code (relating to prohibited political activities);
- b. Retirement, life insurance, or health insurance;
- c. A suspension or removal under Section 7532 of Title 5, United States Code (relating to national security);
- d. Any examination, certification, or appointment (including the examination, removal or separation during a probationary or trial period); and
- e. The classification of any position that does not result in the reduction in (current) grade or pay of an employee.

7. Can I File a Grievance and an Appeal Simultaneously?

The NGP and 5 U.S.C. Section 7121 provide you with options should SBA remove you, downgrade you, or suspend you for greater than 14 days due to unsatisfactory performance, improper conduct, or prohibited personnel practices involving allegations of discrimination. In each of these types of situations, you may elect to file either a *grievance* or an *appeal*, **but not both**. The "trigger" for making the option is the timely filing of either a grievance or an appeal, **in writing**. Once you exercise your option, you may not later change your mind and attempt a different procedure to resolve the matter.

8. Who May File a Grievance Under the Negotiated Agreement?

You may file a negotiated grievance if you are any of the following.

- a. If you are an employee covered by a collective bargaining agreement. A quick reference to determine whether or not you are a member of a bargaining unit is to check your latest SF 50B at block # 37. If block #37 has a BUS Code of 0033, 0045, 0054, 0150, 0160, or 0170, you are a member of that bargaining unit and must use its NGP. If block #37 reflects 7777 or 8888, you must use the procedure described in SOP 37 71. If you find some other code, you should call your servicing personnelist and ask for an interpretation.
- b. If you are an officer of a labor organization you may file a "Union Grievance" on behalf of the labor organization.
- c. If you are an SBA manager or supervisor, you may file an "Agency Grievance" with the union when you believe the union or its representative violated the collective agreement.

9. May an Employee File a Grievance Without Union Assistance?

Yes. You or a group of employees may pursue a negotiated grievance without representation to the final step of the NGP. However, the union, as a party to the agreement, must be given the opportunity to be present at any discussions between you and management concerning your grievance and must approve any settlement of the matter. This is a union's statutory right and is mandatory even if you (or other grievants) do not want the union present during a discussion.

10. What Is the Source of Authority for Official Time?

Official time for representational activities is authorized (through the collective bargaining process) by 5 U.S.C. Section 7131.

11. What Is the Purpose of "Official Time?"

Official time is a release from regular duty without loss of pay for employees to perform sanctioned representational activities described in a labor agreement. Supervisors have the authority to approve and disapprove requests for official time from union representatives, grievants, and employees. Employee representatives who serve on labor-management committees may request and receive official time for their participation the committee.

12. Who May Request Official Time to File a Grievance?

Employees and Union officials (employee representatives) who are members of a bargaining unit may request official time to:

- a. Discuss a problem or concern prior to filing a grievance provided they follow the procedures for requesting official time described in the collective bargaining agreement; and
- b. Participate in the grievance procedure, including preparation and presentation of the grievance.

13. What Does "Reasonable and Necessary" Mean?

The term "*reasonable and necessary*," as used in our labor agreements, means the amount of time necessary to perform the representational function as efficiently and quickly as possible.

14. How Is Official Time Documented?

The request for and the approval or disapproval of official time is documented by using SBA Form 1448, "Representational Time."

15. As the Approving Official, Do I Have Any Latitude in Granting Official Time?

Supervisors should reasonably address official time requests upon their receipt.

- a. You may reasonably delay the request based on the "needs of the Agency" to complete a specific job function or project.
- b. You cannot deny an official time request unless you can show or demonstrate that the use of official time will interfere with the accomplishment of SBA's mission. Likewise, an aggrieved employee or union representative cannot claim entitlement to official time without regard to management's needs and requirements for the performance of assigned work to accomplish SBA's mission.
- c. When such conflicts occur:
 1. Management can reassign the Union official to a position, without loss of

pay, with duties that are not as essential to the SBA's mission (management has the responsibility of showing that such a transfer was warranted); and

2. When there are conflicts between employees' entitlement under Section 7131 of the statute and the entitlement of management under Section 7106 of the statute to manage, the parties must recognize the need for and seek a reasonable accommodation.

16. Is It Appropriate to Record the Official Time as Administrative Leave on the Time and Attendance Record?

No. *Official time* is not leave, but a release from duty to perform sanctioned representational activities on the clock or during regular duty hours. The appropriate transaction code for use of official time depends on how the time was used. SBA Form 1448, "Request for Representational Time," documents the purpose. Time and attendance clerks must record on Form CD 440 the transaction code as:

- a. 35 - Regular time - Basic Renegotiation or Reopener Negotiations;
- b. 36 - Regular Time - Mid-term Negotiations;
- c. 37 - Regular Time - On-going Labor-Management Relationship such as, telephone conference calls with management or union officials, Labor-Management and partnership council meetings; or
- d. 38 - Regular Time - Grievance and appeals. This is the appropriate code for most union stewards and employees preparing responses to proposed disciplinary and adverse actions, grievances including grievance arbitration, grievance mediation and appeals to the Merit System Protection Board.

17. Do Union Officials and Bargaining Unit Members Have to Document Discussions or Meetings of Less Than 15 Minutes?

Not always. The Master Agreement (Article 12, Section 4, Absence for Representation) permits infrequent and unplanned absences without prior approval. The negotiators' intent was to exempt infrequent calls and visits to union officials of less than 15 minutes from documentation. This means four or five 10-minute sessions daily should be documented because they are not "infrequent."

18. If SBA Form 1448, Representation Time, Is Not Complete or All Items (1-6) Are Checked Without Explaining Why, Should I Withhold My Approval Until I Receive an Explanation?

Definitely! If the union representative checked all items (1 - 6), the union officials should provide you with an explanation of the amount of time to be spent on each category checked. Time and attendance recordkeeping requires appropriate designation (codes 35 - 38).

19. If an Employee Prepares a Grievance Response After Work Hours, Is It Appropriate to Authorize Compensatory Time?

No. Official time under 5 U.S.C. Section 7131(d) is an authorization for an employee who would otherwise be in a duty status. It is a release from regular duties to perform representational activities. SBA cannot legally authorize "overtime or compensatory time" (premium pay) under the statute or the Master Agreement for Union officials who perform representational activities (grievance, negotiation, partnership meetings, labor-management meetings) outside of their regular duty hours because such activities do not meet the requirements of 5 U.S.C. Sections 5542 - 3.

20. Is a Union Official Entitled to Earn Compensatory Time for Representational Work?

No. Employees earn compensatory time by performing regular duties outside of the regular work day as requested, approved, and documented by SBA Form 454, "Authorization for Paid Overtime and/or Holiday Work, and for Compensatory Overtime." Union officials who request to earn compensatory time for religious purposes may do so, provided supervisors have work assignments that require compensatory overtime.

21. When Union Officials Travel, Who Signs the Travel Authorization and Travel Voucher?

When Union officials receive a memorandum from the Assistant Administrator for Human Resources authorizing travel for labor relations matters, their supervisors should authorize official time for representational activities. Supervisors sign the "Travel Authorization," SBA Form 21, and the resulting "Travel Voucher," SF 1012, verifying the appropriation and accounting codes are those provided by the Office of Human Resources or the specific office authorizing the travel.

22. Who Has the Authority to Sign a Negotiated Settlement Agreement?

The parties to the collective bargaining agreement are:

- a. The bargaining unit representative; and
- b. The SBA management official having the delegated authority to grant the relief. However, a servicing personnelist with delegated authority and the Associate General Counsel for General Law or designee must review and concur on all settlement agreements before their execution.

23. What Is Mediation?

Mediation is informal. Rules of evidence do not apply, testimony is not taken, and the dispute is not "decided" by the mediator. The mediator facilitates discussions, sometimes with the parties together and sometimes with each side privately.

24. How Does Mediation Work?

The mediator, in effect, creates a new forum where the parties in disagreement can candidly discuss their cases. The mediator will not reveal anything from private discussions which one side does not want revealed to the other. Thus, the mediator often will have more information, and a more complete picture of the problem than either party alone. By virtue of this unique position, the mediator can often find options for agreement which were not evident to the parties.

25. Who Can Request Mediation?

Only the parties (management and union representatives) to a collective bargaining agreement can request mediation services from the Federal Mediation and Conciliation Service (FMCS).

26. Why Mediate a Grievance?

You should mediate a grievance to:

- a. Facilitate the constructive exchange of views and develop alternative solutions;
- b. Narrow or clarify issues; and
- c. Provide a cost effective alternative to litigation (arbitration).

27. What Is the Difference Between Mediation and Arbitration?

Mediation is...	Arbitration is...
1. Fast and less costly	1. Time consuming and expensive
2. Joint problem solving and non-adversarial	2. Adversarial proceeding before an arbitrator
3. Win-win process	3. Win-lose process

28. Is Mediation a Required Step in the Grievance Procedure?

Mediation may occur at any time, and it requires a joint request by the parties. Supervisors and managers are encouraged to initiate requests for mediation. When either party refuses to mediate a grievance, the supervisor or manager involved must document the rationale for not requesting mediation and forward the documentation to the Chief Operating Officer. All managers and personnel servicing offices are to report any success stories to the Labor Relations Policy Officer within 10 days of the resolution of the dispute.

29. Who Can Invoke Arbitration?

Only the parties (labor and management) to the collective bargaining agreement can invoke arbitration upon receipt of a final NGP decision.

30. What Is an Unfair Labor Practice (ULP) Charge?

A ULP charge is an allegation by any person that either SBA or a labor organization engaged in or is engaging in any practice prohibited under 5 U.S.C. Section 7116.

31. Who May File a ULP?

Any person may file a ULP charge against SBA or labor organization. SBA supervisors and managers who propose to file charges against a labor organization must seek advice and concurrence of your servicing personnel specialist and the Office of the General Counsel.

32. What Should I Do If a ULP Charge Is Filed Against Me?

	You Should ...
MANAGER, SUPERVISOR or Management Official	Immediately contact your servicing personnel office and send a copy to SBA's Labor Relations Officer, 409 Third Street, S.W., Washington DC 20416.

33. Where Do I Get Labor Relations Advice?

If you are in...	then contact...
Office of the Inspector General	OIG Personnel Officer at Headquarters
Disaster Assistance Area Office	Disaster Area Personnel Officer
Regional, District, or Branch Office	Human Resources Operations Division - Denver Component
Headquarters	Human Resources Operations Division - Headquarters
Servicing Center	Human Resources Operations Division - Headquarters

Chapter 3

Labor Negotiations

1. How Do You Define Labor Negotiation?

It is the mutual obligation of the representatives of labor and management to meet at reasonable times and bargain in good faith to agree on the conditions of employment affecting employees, subject to any constraints by Federal law, Government-wide rule, or a controlling agreement at a higher level in the Agency. The FLRA has consistently held that "meet and confer" means to negotiate.

2. What Is "Impact and Implementation" (I&I) Bargaining?

I&I bargaining occurs when management provides a labor organization with an opportunity to bargain over proposed changes in existing conditions of employment during the life of the collective bargaining agreement. While the decision may be a management right, the labor organization has the right to offer proposals that reduce the impact of the change on the bargaining unit and how and/or when the implementation of the change takes place. The best way for management to avoid ULP charges is avoid making unilateral changes.

3. What Is the Scope of Bargaining in the Federal Service?

The statute requires labor and management to meet and negotiate in good faith over conditions of employment affecting employees in the bargaining unit. E.O. 12871 expands the scope of bargaining to include:

- a. Personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, where the FLRA determines that SBA has no compelling need for any such rule, regulation, or standard operating procedure;
- b. Former discretionary matters such as: numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, or the technology, methods, and means of performing work;
- c. Procedures that management officials will observe in exercising any authority under the Act; and

- d. Appropriate arrangements for employees adversely affected by the exercise of any authority under the Act by management officials.

4. What Matters Are Nonnegotiable?

The following matters are nonnegotiable:

- a. The Agency's mission, budget, organization, number of employees, and internal security practices; and
- b. Issues covered by Federal law or Government-wide rule or regulation.

5. What Is Interest Based Bargaining (I-BB)?

Interest-Based Bargaining (I-BB) is a positive approach to collective bargaining. It uses the win-win approach proffered by Fisher and Ury in the book *Getting to Yes*, rather than traditional concepts based on positional bargaining. I-BB challenges labor and management to break with the traditional adversarial ways of dealing with each other. Under this process, labor and management must:

- a. Share information on issues or problems and work together to state the issue clearly;
- b. Develop and discuss their respective interests (goals, objectives, or needs);
- c. Identify and discuss mutual interests;
- d. Raise options and agree on criteria to evaluate options;
- e. Discuss options based on the criteria; and
- f. Use consensus to reach a solution.

6. Are There Procedures to Resolve Negotiation Disputes and Impasse?

Yes, the procedures are:

- a. Mediate the dispute;
- b. Either party may request the Federal Service Impasse Panel (FSIP or Panel) to

consider the matter; and

- c. Arbitration or third party fact-finding may be used with the authorization or at the direction of the Panel.

7. How Does a Labor Organization Challenge SBA Policy?

A labor organization challenges SBA regulations and policies within the context of negotiation. Upon receipt of a union proposal that conflicts with SBA policy, management's negotiator shall make an initial determination of whether the policy will stand a compelling need test. In all cases, the management negotiator must seek advice from SBA's labor relations officer, immediately, if possible, and in no event later than 72 hours of receipt of the union's proposal.

8. What Is the Compelling Need Procedure?

Should management's negotiator assert that a compelling need exists for any SBA policy, it is a bar to negotiation. A labor organization may challenge this determination of compelling need by filing an appeal to the FLRA in accordance with 5 C.F.R. Section 2424.

9. What Is the Criteria for a "Compelling Need Test?"

The "Compelling Need Test" is confined to "internal" SBA policies and regulations, which are the policies and regulations intended solely for application within SBA as they relate to personnel policies and practices and matters affecting conditions of employment. Policies and regulations issued by SBA that apply to other agencies, organizations, or clients are not subject to a "Compelling Need Test." A policy meets the "Compelling Need Test" when it:

- a. Is essential, as distinguished from helpful or desirable, to the accomplishment of the mission of the SBA;
- b. Is necessary to ensure the maintenance of basic merit principles;
- c. Implements a mandate to SBA under law or other outside authority, implementation is essentially non-discretionary in nature; and
- d. Establishes uniformity for all or a substantial segment of SBA employees where the policy is essential to the public interest.

10. How Do I Handle Negotiability Questions?

As management's chief negotiator, you may declare a union proposal nonnegotiable if:

- a. The proposal is in violation of law or appropriate regulation;
- b. The proposal is in conflict with management's rights under Section 7106(a) of the Act; or
- c. The proposal is outside the obligation to bargain, i.e., the proposal does not concern personnel policies, practices, or matters affecting working conditions of unit employees.

11. What Procedure Do I Follow to Declare a Proposal Nonnegotiable?

You should:

- a. Send a copy of the disputed proposal to the Labor Relations Officer, along with the reasons why you consider the proposal nonnegotiable;
- b. Obtain written guidance from SBA's LRO to formally declare the union's proposal nonnegotiable (the declaration of nonnegotiability must be in writing and addressed to the union's chief negotiator); and
- c. Recognize that the labor organization may appeal SBA's nonnegotiability determination to the FLRA per 5 C.F.R. Section 2424.

12. Is Official Time, Travel, and Per Diem for Labor Organization Representatives Negotiable?

For the purpose of negotiating an agreement, official time is authorized by 5 U.S.C. Section 7131(a). The number of bargaining unit representatives authorized official time for negotiations shall not exceed the number of persons representing SBA.

The amount of official time for the purpose of representational activities by a labor organization's employee representatives is negotiable.

Whether or not SBA pays travel and per diem for employee representatives of a labor organization is negotiable.

Chapter 4

Third Party Authorities

1. What Is a Third Party?

Third party refers to all neutrals who participate in day-to-day labor relations either through a collective bargaining agreement or required by statute. The following are third party neutrals:

- a. Independent arbitrators, mediators, and factfinders;
- b. Commissioners (mediators) from the Federal Mediation and Conciliation Service (FMCS);
- c. Field investigators, administrative law judges, staff, and members of the Federal Labor Relations Authority (FLRA); and
- d. Factfinders and interest arbitrators from the Federal Service Impasse Panel (FSIP).

2. What Is the Function of the Federal Labor Relations Authority (FLRA)?

The FLRA performs the following:

- a. Determines the appropriateness for labor organization representation;
- b. Supervises, conducts, and certifies bargaining unit elections;
- c. Resolves issues relating to determining compelling need for Agency rules and regulations;
- d. Resolves issues relating to the failure to bargain in good faith;
- e. Conducts hearings and resolves unfair labor practice complaints;
- f. Resolves exceptions to arbitrator's awards; and
- g. Provides labor-management training and facilitation assistance.

3. What Is the Function of the Federal Mediation and Conciliation Service (FMCS)?

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The FMCS performs the following:

- a. Provides assistance when the parties first reach a bargaining impasse. The FMCS Commissioner's primary objective is to get the parties to agree to a collective bargaining agreement;
- b. Provides the parties with list of arbitrators to hear and adjudicate grievances invoked using the arbitration article in the collective bargaining agreement. See 5 U.S.C. Section 7119(a) and (b); and
- c. Provides labor and management training and facilitation assistance.

4. What Is the Role of the Federal Service Impasse Panel (FSIP)?

The FSIP assists in resolving impasses from the collective bargaining process through factfinding and interest arbitration. The President appoints seven members to the Panel. A member of the Panel may review a factfinder's report and render a decision that imposes specific contract language upon the parties for the duration of the collective bargaining agreement. See 5 C.F.R. Parts 2470 - 2473.

Chapter 5

Delegated Authority and Program Responsibilities

1. Who Has Program Responsibility?

By statute, the Administrator has overall responsibility for SBA's Labor Relations Program. The Administrator delegated to the Associate Deputy Administrator for Management and Administration (ADA/M&A) the responsibility for overall direction of the program, including labor-management cooperation in support of the President's initiative under E.O. 12871 (see appendix 4 of this SOP). The Administrator reserves the right to approve any negotiated agreement with a labor organization having exclusive recognition.

2. What Is the ADA/M&A's Role?

The ADA/M&A directs SBA's Labor Relations Program. The ADA/M&A is SBA management team's chair on the SBA - American Federation of Government Employees (AFGE) Partnership Council.

3. What Is the Assistant Administrator for Human Resources' Role?

The Assistant Administrator for Human Resources (AA/HR) administers the SBA Labor Relations Program. The AA/HR or designee(s):

- a. Represents the Administrator in labor relations matters with the national headquarters of labor organizations, negotiates master labor agreement(s) covering one or more bargaining units, and implements cooperative labor-management relations initiatives at appropriate SBA levels;
- b. Grants exclusive recognition to a labor organization that meets the requirements for exclusive recognition under the Act as ordered by the FLRA;
- c. Consults and negotiates with labor organizations that have exclusive recognition and conducts any other meetings with labor organizations deemed necessary;
- d. Recommends the approval of negotiated agreements with labor organizations having exclusive recognition with SBA or any of its components;
- e. Makes SBA's assertion of nonnegotiability due to a compelling need under Section

7117 of the Act;

- f. Makes final SBA determinations in connection with any conflict of interest, or apparent conflict of interest, resulting from employee participation in the management of a labor organization or acting as a representative of a labor organization or an individual;
- g. Approves requests from SBA managers to pay travel or per diem to SBA employees negotiating on behalf of a certified labor organization (approval is contingent upon payment being clearly in the interests of the Agency consistent with paragraph 3-13, "Labor Negotiations," of this SOP); and
- h. Provides all employees in SBA bargaining units with an Annual Notification of Representational Rights via an SBA Information Notice. This notice must state:

"Title 5 United States Code Section 7114 includes a requirement that each agency shall annually inform employees of their rights under paragraph (2)(B).

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at --

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if --

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation."

- i. Updates appendices to this SOP.

4. What Is the Role of a Regional Administrator?

Regional administrators or their designee(s) carry out the labor relations program in their regions with HR and OGC who are available to provide advice and assistance. A regional administrator:

- a. Serves as the chair of a Regional Partnership Council with labor organizations having exclusive representational rights in the region;
- b. Serves as SBA's final decision authority on all grievances arising under the NGP

within their region;

- c. Reviews and recommends approval of any negotiated agreement or supplements to any agreement, as well as any grievance settlement agreements with a labor organization that has exclusive recognition within their region; and
- d. Makes an initial determination regarding a conflict of interest in their region, and refers any appeal to the AA/HR for final Agency determination.

5. What Is the General Counsel's Role?

Office of General Counsel provides:

- a. Legal assistance in negotiating agreements and supplements to agreements with labor organizations;
- b. Legal review of a negotiated agreement or supplemental agreement within 20 days of its execution for the Administrator's review as required by 5 U.S.C. Section 7114(c)(1) and (4);
- c. Representation in third party proceedings, such as unfair labor practice hearings, arbitration proceedings, and meetings with the FSIP and FLRA in matters relating to the negotiation process; and
- d. Legal review of all grievance settlement agreements.

6. What Is the Role of a Field Office Head?

District, center, and area office directors are responsible for:

- a. Granting exclusive recognition to labor organizations that meet the requirements for exclusive recognition as ordered by the FLRA (see paragraph 1-5);
- b. Negotiating in good faith local or supplemental agreements, as appropriate, depending upon whether or not the office is included in a national or consolidated bargaining unit;
- c. Ensuring employee rights (paragraph 1-4) are protected;
- d. Establishing a cooperative labor-management committee or a local partnership

council and/or employee workgroups for the purpose of identifying problems and crafting solutions to better serve the small business community; and

- e. Requiring his or her managers and supervisors who direct bargaining unit employees to:
 - (1) Comply with the letter and spirit of this SOP and the provisions of any applicable negotiated agreement;
 - (2) Seek advice from their servicing personnel office before engaging in informal or formal labor-management activities;
 - (3) Obtain clearance or concurrence of union/employee grievance settlement offers from Human Resources and the Office of General Counsel before finalizing any (oral or written) settlement;
 - (4) Comply with the applicable leave regulations, including the proper recording of approved official time use and any applicable negotiated agreement when approving requests from union representatives for official time; and
 - (5) Notify the appropriate servicing personnel office of grievances or unfair labor practice complaints, immediately upon receipt.

7. Who Should Receive Copies of Labor Relations Documents?

Management Board members, managers, and supervisors must provide copies of the following labor relations documents to:

Your servicing personnel office	SBA's LRO
<ul style="list-style-type: none"> a. Local agreements and supplements to agreements; b. All unfair labor practice charges; c. Any requests to invoke arbitration; and d. Any contemplated grievance settlement agreements. <p>The servicing personnel office will forward, as appropriate, copies to the LRO.</p>	<ul style="list-style-type: none"> a. Communications connected with extending recognition, including petitions for elections or challenges to an existing bargaining unit. b. A description of any exclusive recognition ordered by the FLRA, the number of employees in the unit, whether it includes professional employees and the type of professional employees it includes, and any changes to the unit description. c. Any union proposals which you recommend denying based on "compelling need" or "nonnegotiability."

8. What Are the Responsibilities of the Office of Human Resources Regarding Labor Relations?

Labor relations responsibilities fall into two categories, operations which is provided by your servicing personnel office and policy which is provided by the Guidance, Innovation, and Review Division in OHR.

OPERATIONS	POLICY
1. Advises managers, office and center directors and supervisors on the implementation of labor relations policy.	1. Develops and communicates labor relations policy. Serves as senior adviser to the Management Board on matters related to labor relations policy.
2. Advises employees, union representatives and managers on their rights under 5 U.S.C. Chapter 71. Coordinating local Union representation in all employee meetings and new employee orientation sessions.	2. Issues annual Weingarten Rights notices as required by 5 U.S.C. § 7114(a)(3).
3. Serves as management's point of contact for labor-management matters raised by local Union representatives for serviced offices and meets with Local representatives on local issues.	3. Meets with Council representatives on national issues. Makes recommendations for resolving disputes and complex issues between management and the union on a national basis.
4. Advises local managers on the resolution of informal grievances and complaints. Process grievances at the local level, providing guidance and representation in the resolution of grievances, including alternate dispute resolution and settlement agreements.	4. Reviews local agreements and settlement agreements for compliance with labor relations policy and master agreement(s). Reviews arbitration decisions to determine whether or not to file an agency exception to the awards.
5. Serves as or assists Agency representative(s) in local labor-management cooperation committees.	5. Serves on management's Partnership Council team.
6. Advises and assists managers and supervisors in the day-to-day labor relations activities, including local negotiations, requesting FMCS assistance and investigating alleged ULP charges.	6. Provides policy review of negotiated agreement(s) or supplemental agreement(s) per § 7114(c)(3 & 4) requirements. Provides guidance and advice for making: compelling need and negotiability determinations; and ULP charges and offers of settlement.

Appendix 1**Index to Forms and Reports****FORM****Paragraph**

SBA Form 1448, Representational Time (Official Time Request)	2-10
SF 1187, Request for Payroll Deductions for Labor Organizations	1-20
SF-1188, Cancellation of Payroll Deductions for Labor Organizations	1-22

Report

Reserved

Appendix 2

Definitions

AFGE: American Federation of Government Employees, a labor organization (union) and a member of the AFL-CIO. AFGE has majority status with SBA and represents Headquarters and most field offices.

AFL-CIO: American Federation of Labor and Congress of Industrial Organizations, a federation of *craft* and *industrial unions*, as well as unions of a mixed structure.

Agent: A person who acts on behalf of either management or the union.

Agreement (Contract): A written document between management and the union setting out some of the personnel policies, practices, and conditions of employment for bargaining unit employees.

Arbitration: A quasi-judicial, third party method of settling labor-management disputes. There are two types of arbitration: *grievance arbitration*, usually the final step of the negotiated grievance procedure (NGP); and *interest arbitration*, resolution of an impasse in contract negotiation as approved by the Federal Service Impasse Panel (FSIP).

Arbitrator: An impartial third party whom management and the union jointly select and submit their differences for a final and binding decision and award.

Bargaining Unit: A group of employees in an activity, craft, function, or other appropriate basis which ensures a clear and identifiable community of interest among the employees concerned and will promote effective dealings and the efficiency of Agency operations. The Federal Labor Relations Authority certifies whether or not a bargaining unit is appropriate for representational purposes.

Break Period (Coffee Break; Rest Period): Brief interruption in the workday, usually 5 to 15 minutes duration without loss of pay or charge to leave.

Check Off: The automatic deduction of union dues, assessments, and fees through a bi-weekly allotment from a member's salary check. Only bargaining unit members can give written permission to have these sums deducted from their pay.

Civil Service Reform Act of 1978, P.L. 95-454: A Federal law enacted in 1978 that created the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), and the Federal Labor Relations Authority (FLRA).

Contract (Collective Bargaining Agreement): A written contract resulting from negotiation by
Effective Date: March 2, 1998

representatives of the employer and the union having exclusive recognition. Usually such contracts have a specified life span of 1, 2, or 3 years with a provision for automatic renewal.

Confidential Employee: A person who acts in a confidential capacity with respect to an individual who formulates or effectuates management policy in the field of labor-management relations. Confidential employees are excluded from the bargaining unit.

Contract Bar: The life span of a collective bargaining agreement that precludes the FLRA from granting a rival union an election to challenge the exclusive representative for the representation rights, or an Agency, or a group of employees from petitioning for a decertification election.

Duty of Fair Representation: A union's duty to represent fairly all employees in the bargaining unit without discrimination and without regard to labor organization membership.

Dues Withholding (Check Off): The automatic deduction of union dues, assessments, and fees through a bi-weekly allotment from a member's salary check. Only bargaining unit members can give written permission to have these sums deducted from their pay.

Equal Employment Opportunity Commission (EEOC): Created by the Civil Service Reform Act of 1978, EEOC has overall responsibility or leadership and supervision of the Federal sector EEO Program.

Exclusive Representative: The right acquired by a labor organization to be the sole representative of the employees in a bargaining unit, as determined by the FLRA.

Excluded Employee: Employees who, by the nature of their responsibilities, are not included in any bargaining unit. Excluded employees include managers, supervisors, personnel specialists, internal security personnel, and confidential employees.

Executive Order: A document signed by the President of the United States that has the effect of law upon the executive branch of Government.

Exempt employee: An employee who is not subject to the provisions of the *Fair Labor Standards Act*. Generally all professional employees (attorneys, accountants, engineers) and all employees at or above the GS-9/10 level who exercise independent judgement are exempt employees.

Factfinding: Investigation of a dispute by an individual or board that results in a report describing the issues of fact in the dispute and sometimes recommends a solution.

Fair Labor Standards Act (FLSA): A Federal statute passed in 1938 that set minimum wage and maximum hours. In the Federal sector, FLSA relates to exempt and non-exempt coverage referencing premium pay (overtime pay) and hours of work.

Federal Labor Relations Authority (FLRA): The FLRA or Authority, established in 1978 by P.L. 95-454, is an independent agency having the responsibility for administering the Federal Labor-Management Statute.

Federal Mediation and Conciliation Service (FMCS): An independent agency created in 1947 to provide mediators to assist the parties (labor and management) in resolving bargaining disputes and other assistance including providing certified panels of qualified arbitrators.

Federal Service Impasses Panel (FSIP): An entity within the FLRA having the authority to resolve impasses arising during negotiations between labor and management.

Grievance: Any complaint by an employee, group of employees, or by the union concerning any matter relating to the employment of the employee; or any complaint by an employee, the union, or the employer concerning the effect or interpretation; or any claim of a violation or breach, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Grievance Procedure: A negotiated procedure applicable only to bargaining unit employees for the consideration and resolution of disputes over issues within the negotiated scope of the procedure.

Impact and Implementation Bargaining (I&I): Labor-management negotiations over the effect of employer decisions that affect (the physical) environment of working conditions and how the decisions effects the employee's work life such as installation of new equipment requiring training.

Impasse: A deadlock in negotiations between management and labor.

Interest-Based Bargaining (IBB): IBB is a non-traditional approach to problem solving through a procedure of problem/opportunity identification; identifying individual interests, objectives, and limitations; followed by an evaluation of possible solutions; discussion of possible solution; and concluding with an agreement.

Just and Sufficient Cause: Good or fair reasons for discipline, and the discipline is appropriate for the offense. This term is used in agreements to safeguard employees from unjustified discharge or lesser discipline.

Labor Relations Officer (LRO): An organizational title assigned to the labor relations specialist who manages SBA's Labor Relations Program and is responsible for labor relations policy.

Management Official: An employee in a position, the duties and responsibilities of which require or authorize the employee to formulate, determine, or influence the policies of the Agency

that impact on bargaining unit employees' conditions of employment. Management officials are excluded from the bargaining unit.

Management Rights: Rights and prerogatives reserved to management which are not subject to collective bargaining.

Mandatory Subjects for Bargaining: Those items over which 5 U.S.C. Chapter 71, Federal Service Labor-Management Statute, requires both parties to negotiate. A failure to bargain in good faith over these items could be the basis of an unfair labor practice charge.

Mediation: A procedure for third party settlement of disputes, involving a neutral mediator provided by the FMCS to assist the parties in reaching an agreement or settlement of issues during negotiations of an agreement or the processing of a grievance.

Merit Systems Protection Board (MSPB): An independent, quasi-judicial Federal administrative agency created by the Civil Service Reform Act of 1978, P.L. 95-454, the MSPB, through its regional offices, adjudicates adverse action appeals. Members of a bargaining unit have the right to exercise a choice of procedures under 5 U.S.C. § 7121(d) and (e) by filing a MSPB appeal or a grievance using the NGP, but not both.

National Federation of Federal Employees (NFFE): NFFE is an independent union that represents several district offices and the Office of Financial Operations - Denver.

Negotiated Grievance Procedure (NGP): The procedure negotiated by the parties to resolves disputes over the interpretation or application of their collective bargaining agreement.

Official Time: Is a release from an employee's normal duty hours based on a contractual right that authorizes certain union-related activities outside the employee's regularly assigned work and which is not charged to leave.

Partnership Council: A joint labor-management body based on mutual respect and trust that is committed to pre-decisional information and policy development.

Past Practice: Existing practices, sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement, except, perhaps, by reference to their continuance.

Payroll Deductions: Amount withheld from employees' earnings by SBA for Federal and State income taxes, retirement, insurance premium, and other governmental levies; labor union dues; and other authorized wage assignments.

Permissive Subjects for Bargaining: Issues over which management may choose to bargain, but which it has no obligation to do so. E.O. 12871 requires SBA to negotiate these matters.

Position Description: An official document which outlines the duties and responsibilities assigned to a particular position.

Solidarity, U.S.A.: An independent labor organization which currently has a dues withholding with SBA covering some non-bargaining unit offices.

Unfair Labor Practice (ULP): Conduct on the part of either union or management that violates provisions of 5 U.S.C. § 7116. Failing to bargain in good faith and interference with the administration of a union are examples of a ULP.

Unit determination: The process of establishing a unit of appropriate job for the purpose of collective bargaining.

Unit Petition: Document filed by a labor organization with the FLRA to determine the appropriateness of a group employees for the purpose of representation and negotiating a collective agreement.

Appendix 3

AFGE National Consolidated Bargaining Unit

BUS Code: 0033

AFGE LOCAL

Office Location and Region

0605	Cleveland District Office (OH), Region V;
0800	Minneapolis District Office (MN), Region V; and Fargo District Office (ND), Region VIII;
1016	Indianapolis District Office (IN), Region V; and Louisville District Office (KY), Region IV;
1399	San Diego District Office (CA), Region IX;
1627	Pittsburgh District Office (PA), Region III;
2073	Boston Regional Office (MA); Boston District Office (MA); Augusta District Office (MA); Concord District Office (NH); Hartford District Office (RI); Montpelier District Office (VT); Providence District Office (RI); and Springfield Branch Office (MA) Region I;
2088	Philadelphia Regional Office (PA); Philadelphia District Office (PA), Region III;
2144	Madison District Office (WI); and Milwaukee Branch Office (WI), Region V;
2532	Headquarters Washington, D.C.; Washington District Office (DC), Region III; Chicago Regional Office (IL), Chicago District Office (IL), and Columbus District Office (OH) Region V; Albuquerque District Office (NM), Region VI; Corpus Christi Branch Office (TX), Lower Rio Grande Valley District Office (TX), and Oklahoma City District Office (OK), Region VI; Denver Regional Office (CO), Helena District Office (MT), and Salt Lake City District Office (UT), Region VIII; San Francisco Regional Office (CA), San Francisco District Office (CA), Fresno District Office (CA), Fresno Commercial Loan Center (CA), Las Vegas District Office (NV), Los Angeles District Office (CA), Santa Ana District Office, Santa Ana Loan Servicing and Liquidation Centers and Western Litigation Center (CA), and Phoenix District Office (AR), Region IX;
2867	New Orleans District Office (LA), Region VI;

- 2959 Dallas Regional Office (TX) and Dallas District Office (TX), Region VI;
- 2951 Puerto Rico and Virgin Islands District Office (PR), Region II;
- 3134 New York Regional Office (NY); New York District Office (NY), Region II; and New York Home Loan Servicing Center;
- 3146 Richmond District Office (VA), Region III;
- 3196 Seattle Regional Office (WA), and Seattle District Office (WA), Region X;
- 3539 Little Rock District Office (AR) and Little Rock Commercial Loan Servicing Center, Region VI;
- 3588 Newark District Office (NJ), Region II;
- 3608 Charleston Branch Office (WV), Region III; Clarksburg District Office (WV);
- 3613 Albany Post-Of-Duty (NY); Buffalo Branch Office (NY); Syracuse District Office (NY); and Elmira Branch Office (NY), Region II;
- 3798 Springfield Branch Office (IL), Region V;
- 3814 Lubbock District Office (TX), Region VI;
- 3841 Atlanta Regional Office (GA); Atlanta District Office (GA); Charlotte District Office (NC); and Miami (FL, Region IV);
- 3845 Jackson District Office (MS); and Gulfport Branch Office (MS), Region IV.

Appendix 4

Executive Order 12871 of October 1, 1993, Labor-Management Partnerships

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1. The National Partnership Council.

(a) Establishment and Membership. There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:

- (1) Director of the Office of Personnel Management ("OPM");
- (2) Deputy Secretary of Labor;
- (3) Deputy Director for Management, Office of Management and Budget;
- (4) Chair, Federal Labor Relations Authority;
- (5) Federal Mediation and Conciliation Director;
- (6) President, American Federation of Government Employees, AFL-CIO;
- (7) President, National Federation of Federal Employees;
- (8) President, National Treasury Employees Union;
- (9) Secretary-Treasurer of the Public Employees Department, AFL-CIO; and
- (10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively "agency"), not otherwise represented on the Council. Members shall have 2-year terms on the Council, which may be extended by the President.

(b) Responsibilities and Functions. The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

- (1) Supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;
- (2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;
- (3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;
- (4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and
- (5) working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.

(c) Administration.

(1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

(d) General.

(1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special government employees for any purpose.

Section 2. Implementation of Labor-Management Partnerships Throughout the Executive Branch. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Section 3. No Administrative or Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
October 1, 1993

Appendix 5

NATIONAL LABOR-MANAGEMENT PARTNERSHIP AGREEMENT

BETWEEN

U. S. SMALL BUSINESS ADMINISTRATION

AND

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

COUNCIL - 228

In accordance with Executive Order 12871, the U.S. Small Business Administration (SBA or management) and the American Federation of Government Employees (AFGE), Council 228 (Union), exclusive representative of employees of SBA (hereinafter referred to as parties), have voluntarily formed a Labor-Management Partnership Council (Council).

The mission of the SBA/AFGE Partnership Council is to promote and implement the joint involvement of management and union in effectively accomplishing the mission of the Agency.

The Council will be based on:

- Mutual respect and trust.
- Commitment to sharing information by all available means at all levels.
- Use of an Interest-based approach to consensus decision-making.

A) COMMUNICATION

The Council will foster relationship building and open communication.

B) EDUCATION

The Council is committed to developing joint training and educational opportunities to meet the needs of the Council and all employees.

C) FUNCTIONS

The Council shall:

- Share information with all employees throughout SBA.
- Use an interest-based approach to deal with issues of agency-wide impact, e.g.

agency resources, organizational changes, quality of worklife, etc.

- Promote and practice pre-decisional involvement.
- Recognize, publicize, and promote successes within the Agency.
- Facilitate joint problem resolution and recommend appropriate action to top management.
- Promote joint accountability at all levels within the Agency.

The parties agree to work jointly as full partners through Alternative Dispute Resolution (ADR), task forces, work groups, action groups, teams, etc., to identify opportunities, develop and implement solutions that foster the delivery of the highest quality of service to the Agency's customers.

In order to have full participation by both parties, the parties agree to openly share information prior to the commencement of the work of these groups, so as to provide the parties with an opportunity for involvement at the pre-decisional stage regarding personnel policies, practices and conditions of employment issues. This shall include matters relating to the National Performance Review.

The parties agree to share the findings/recommendations of any existing work groups at the next Labor-Management Cooperation Committee meeting.

The parties agree to negotiate over the subjects set forth in 5 U.S.C. Section 7106(b)(1), and instruct subordinate officials to do the same, as required by Executive Order 12871.

Both parties agree to create a process (standing committee/ADR) to address outstanding grievances, ULPs, or other disputes within a reasonable period of time, e.g. sixty (60) days after the signing of this agreement. If the parties are successful, the outstanding ULP's and grievances related to the Reorganization will be considered to be resolved.

Management agrees to grant official time as necessary and make appropriate logistical arrangements for individuals designated to perform projects of the Council.

STRUCTURE: The Council will consist of a maximum of eighteen (18) members equally appointed by both parties.

With the consent of the Council, additional union and management representatives will participate.

The Council will be jointly chaired by a Union and an Agency representative.

Staff support will be provided by the Agency to the Council as needed.

The Council may establish committees, task forces or other working groups to effectuate the purpose of the Council.

COUNCIL MEETINGS: The Council Meetings shall be administered in the following manner:

- Leadership of the meetings will alternate between the parties.
- The full Council shall meet at least semi-annually on a day and time to be determined by the parties. Subgroups and committees and/or task forces of the Council shall meet in person or by conference call.
- The Agency will pay travel, training and per diem costs of all Council members. Travel and per diem will be provided for additional participants, as agreed upon.
- Final agenda should be prepared and issued to members at least five (5) working days prior to the scheduled meeting.
- The Council may establish rules or procedures deemed necessary to carry out the mission of this Council.

This agreement is a living document that embodies the general goals of the Council. By mutual consent, Union and Management may modify this document to reflect changing conditions within the Agency.

Date: ***July 11, 1996***

For the Agency:

/S/

Philip Lader
Administrator
U.S. Small Business Administration

For the Union:

/S/

John N. Sturdivant
National President
American Federation of Government
Employees, AFL-CIO

(From SBA/AFGE Master Agreement, dated January 1994)
U. S. Small Business Administration

APPENDIX C

REPRESENTATIONAL TIME

Per Article 8 or Article 12, I request the following time for representational activity
from _____ to _____, on (Date) _____ for the purpose of:

- ☐ 1. Discussing and investigating complaints, grievances, or appeals with bargaining unit employees.
- ☐ 2. Preparing grievances and appeals of unit employees.
- ☐ 3. Attending meetings with supervisors and other Agency officials.
- ☐ 4. Attending grievance meetings as an employee's representative or as a Union observer when the employee is not represented by a Union representative.
- ☐ 5. Holding discussions initiated by the FLRA with Union officers and stewards and activities carried out in response to requests from the FLRA.
- ☐ 6. Other: _____

Time Out _____
(Employee/Steward/Union Official)

Time In _____
(Supervisor)

Approved ☐
Not Approved at this time ☐

Reason for Denial: _____

Approved for _____ to _____ Date _____

SBA Form 1448 (11-84)

Standard Form 1187
Revised January 1979
Office of Personnel Management
5 C.F.R. :550.311(a)(1)

REQUEST FOR PAYROLL DEDUCTIONS FOR LABOR ORGANIZATIONS DUES

Privacy Act

Statement

Section 5525 of Title 5 United States Code (Allotments and Assignments of Pay) permits Federal agencies to collect this information. This completed form is used to request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction. Completing this form is voluntary, but it may not be processed if all requested information is not provided.

This record may be disclosed outside your agency to: 1) the Department of Treasury to make proper financial adjustments; 2) a Congressional office if you make an inquiry to that office related to this record; 3) a court record or an appropriate Government agency if the Government is party to a legal suit; 4) an appropriate law enforcement agency if we become aware of a legal violation; 5) an organization which is designated collection agent of a particular labor organization; and 6) other Federal agencies for management, statistical and other functions (without your personal identification).

Executive Order 9397 allows Federal agencies to use the social security number (SSN) as an individual identified to avoid confusion caused by employees with the same or similar names. Supplying your SSN is voluntary, but failure to provide it, when it is used as the employee identification number, may mean that payroll deductions cannot be processed.

Your agency shall provide an additional statement if it uses the information furnished on this form for purposes other than those mentioned above.

1. Name of Employee (<i>Print-Last, First, Middle</i>)	2. Employee I.D. Number (<i>SSN or Other</i>)	3. Timekeeper Number
4. Home Address (<i>Street Number, City, State and Zip Code</i>)	5. Name of Agency (<i>Include Bureau, Division, Branch or other designation</i>)	

Section A-For Use By Labor Organization

(*indicate Local, Branch, Lodge or Other Appropriate Identification*) _____ Name of Labor Organization

I hereby certify that the regular dues of this organization for the above named member are currently established at \$ _____ per (biweekly pay period)(calendar month).
(Strike out whichever period is not appropriate, based on arrangement with the employee's agency.)

Signature and Title of Authorized Official	Date (<i>Month, Day, Year</i>)
--	----------------------------------

Section B-Authorization By Employee

I hereby authorize the above named agency to deduct from my pay each pay period, or the first full pay period of each month, the amount certified above as regular dues of the (Name of Labor Organization):

and to remit such amount to that labor organization in accordance with its arrangements with my employing agency. I further authorize any change in the amount to be deducted which is certified by the above named labor organization as a uniform change in its dues structure.

I Understand that this authorization, if for a biweekly deduction, will become

effective the pay period following its receipt in the payroll office of my employing agency. I further understand that Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues, is available from my employing agency, and that I may cancel this authorization by filing Standard Form 1188 or other written cancellation with the payroll office of my employing agency. Such cancellation will not be effective, however, until the first full pay period which begins on or after the next established cancellation date of the calendar year after the cancellation is received in the payroll office.

Contributions or gifts (including dues) to the labor organization shown at left are not tax deductible as charitable contributions. However, they may be tax deductible under other provisions of the Internal Revenue Code.

Signature of Employee	Date (<i>Month, Day, Year</i>)	
	YES	NO
FOR COMPLETION BY AGENCY ONLY - The above named employee and labor organization meet the requirements for dues withholding (Mark the appropriate box. If "YES", send this form to payroll. If "NO", return this form to the labor organization.)		

Effective Date: March 2, 1998

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Standard Form 1188
Revised January 1987
Office of Personnel
Management
5 C.F.R. § 550.312(c)

CANCELLATION OF PAYROLL DEDUCTIONS FOR LABOR ORGANIZATION DUES

Privacy Act Statement

Section 5525 of Title 5, United States Code (Allotments and Assignments of Pay) permits Federal agencies to collect this information. This completed form is used to stop labor organization dues from being deducted from your pay and to notify the labor organization that dues will be no longer deducted. Completing this form is voluntary, but it may not be processed if all information is not provided.

This record may be disclosed outside your agency to: 1) the Department of Treasury to make proper financial adjustments; 2) a Congressional office if you make inquiry to that office related to this record; 3) a court or appropriate government agency if the Government is a party to a legal suit; 4) to an appropriate law enforcement agency if we become aware of a legal violation; 5) an organization which is designated collection agent of a particular labor organization; and 6) other Federal agencies for management, statistical and other official functions (without your personal identification).

Executive Order 9397 allows Federal agencies to use the Social Security Number (SSN) as an individual identifier to avoid confusion caused by employees with the same or similar names. Supplying your SSN is voluntary, but failure to provide it, when it is used as the employee identification number, may mean that this payroll action cannot be processed.

Your agency shall provide an additional statement if it uses the information furnished on this form for purposes other than mentioned above.

1. Name of Employee (Print -- Last, First, Middle)	2. Employee I.D. Number (Social Security or other)
2. Agency Name (Include Bureau, Division, Branch, or other Designation)	4. Timekeeper Number
3. Name of Labor Organization	6. Cancellation Date (Completed by agency only)
I hereby cancel my authorization of dues for the above labor organization from my pay. I understand that this cancellation will become effective on the first full pay period which begins on or after the next established cancellation date (indicated above) after the request is received in my agency payroll office.	
7. Signature of Employee	8. Date (Month, Day, Year)

(Submit copies 1 and 2 to the agency payroll office. Copy 1 is retained for payroll records and Copy 2 is forwarded by the payroll office to the labor organization in accordance with the arrangement between the agency and the labor organization. Copy 3 is retained by the employee.)

1 - Agency Payroll Copy

1188-104

